

# **EXHIBIT 3**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

BYTEMARK, INC.

Plaintiff,

v.

MASABI LTD.,

Defendant

Case No. 6:22-CV-00304 ADA-DTG

Patent Case

**SUPPLEMENTAL DECLARATION OF CRAIG RATTRAY IN SUPPORT  
OF DEFENDANT MASABI LIMITED'S MOTION TO  
DISMISS PLAINTIFF BYTEMARK, INC'S AMENDED COMPLAINT**

I, Craig Rattray hereby declare:

1. I am over eighteen years of age. I have personal knowledge of the facts set forth in this declaration and, if called to testify as a witness, could and would testify competently thereto.
2. I am the general counsel for Masabi Limited (hereinafter "Masabi LTD"). Our corporate office is located at 100 Avebury Boulevard Milton Keynes, MK9 1FH, United Kingdom. I have worked for Masabi LTD since 16 June 2020, and I work and reside in London, United Kingdom.
3. I understand that this declaration will be submitted to the United States District Court for the Western District of Texas and may be considered by that Court in support of Defendant Masabi LTD.'s Motion to Dismiss.
4. I have reviewed Bytemark, Inc's Response to Defendant Masabi LTD.'s Motion To Dismiss under Rule 12(b)2 (hereinafter "Response Brief") and note that it has several misstatements about my company Masabi LTD. I make this statement based upon my position as General Counsel for Masabi LTD. and based upon my personal knowledge

and access to company records.

5. Plaintiff Bytemark in its Response Brief suggests that Masabi LLC and Masabi LTD. are one and the same company and that the conduct of Masabi LLC should be imputed to Masabi LTD. to establish personal jurisdiction in Texas. This suggestion is baseless.

6. Masabi LLC is a US company registered in Delaware. Masabi LTD. is a United Kingdom registered company. Masabi LLC and Masabi LTD. are separate legal entities, they have separate corporate governances and they are treated and operated as separate legal entities.

7. Masabi LLC files its federal tax return with the IRS in the US. Masabi LLC files a state tax return with the state of New York.

8. Masabi LTD. files its tax return in the UK.

9. Masabi LLC uses BDO USA for its accounting firm and Masabi LTD. uses BDO UK for its accounting firm.

10. Masabi LLC's bank account is with SVB/First Citizen Bank in California. It also has another account with J.P. Morgan in New York.

11. Masabi LTD.'s bank accounts are in the UK with Barclays Bank (UK) and with HSBC (UK).

12. Masabi LLC and Masabi LTD. bank with different banks [in the USA and UK respectively].

13. Masabi LLC and Masabi LTD do not share any debt.

14. Masabi LLC has its own health insurance policy for its employees and it pays for that health insurance policy. It does not share health insurance with Masabi LTD.

15. Masabi LLC has its own general liability insurance policy and it pays for its insurance policy. It does not share its general liability insurance with Masabi LTD.

16. Masabi LLC has about 38 employees in the US and they each sign employment contracts with Masabi LLC. Masabi LLC has 2 employees that work in Texas, and they work out of their home.

17. Masabi LTD. has about 148 employees, and they each sign employment contracts with Masabi LTD. None of Masabi LTD.'s employees live in the US.

18. Masabi LLC pays its employee payroll from its California located bank account.

19. Masabi LTD. pays its employee payroll from its UK bank account.

20. Masabi LLC pays Masabi LTD. a licensing fee for access to the accused software. Masabi LLC pays that licensing fee from its bank account in California, to Masabi LTD.'s bank account in the UK.

21. Masabi LLC and Masabi LTD. do not have any buildings, rental space, storage, files, or property in Texas.

22. Masabi LLC. has a work address in NYC at 1330 Avenue of the Americas, Suite 23a, New York, NY, 10019.

23. The accused software in this lawsuit is not stored locally nor is it present anywhere in Texas.

24. Masabi LTD. does not place the accused software in the stream of Texas commerce.

25. The accused software in this lawsuit is on an Amazon Web Services (AWS) server in the cloud, and that server is physically located in the state of Washington, USA.

26. A mobile ticketing application is merely an interface for the accused software that is on a Washington State located server.

27. Updates to the accused software are done by Masabi LTD. employees located in the UK.

28. Masabi LLC has only two customers in Texas, VIA San Antonio Texas

Metropolitan Transit (hereinafter "VIA") and Woodland Express Parkway (hereinafter "Woodland").

29. Masabi LLC has its own director of marketing and its own marketing budget for its operations in the US. Masabi LLC's director of marketing, Irina Grant is located in Florida, USA and she operates independently from Masabi LTD.'s marketing director James Gooch.

30. Masabi LLC has its own marketing budget and it pays for marketing events in the US out of its own marketing budget.

31. Masabi LLC's business development employees identified (and converted) VIA and Woodland as opportunity prospects, not Masabi LTD.

32. Masabi LLC created the bid for the VIA and Woodland, presented the bids to VIA and Woodland, and won the contracts with VIA and Woodland, not Masabi LTD.

33. Masabi LTD. provided cost information to Masabi LLC for the VIA and Woodland prospects based on functionality parameters that Masabi LLC provided to Masabi LTD. Based on that cost information, Masabi LLC had the freedom to establish the price it wanted to charge VIA and Woodland. The price set forth in the contracts with VIA and Woodland were set by Masabi LLC.

34. The contract negotiations and closings with VIA and Woodland were handled by Masabi LLC representatives.

35. The VIA and Woodland contracts that were signed with Masabi LLC have Masabi LLC's New York address on the contracts. See **Exhibit A**.

36. Masabi LLC collects all revenues that are derived from VIA and Woodland contracts.

37. Masabi LLC employees manage the relationship with VIA and Woodland, not Masabi LTD.

38. Customers in Texas that need technical support directly contact the Masabi LLC account managers; they are the first line support for VIA and Woodland.

39. Contract services such as additional members, setup fee, transit application, SDK implementation, installation and mobilization, are fees charged to customers by Masabi LLC and Masabi LLC performs those services, not Masabi LTD.

40. Masabi LLC conducted a case study for its San Antonio Texas (VIA) deployment and the database for that case study is managed by Masabi LLC's director of marketing, Irina Grant.

41. Masabi LLC's project manager, Suzanne Rousselle, coordinates the import of proprietary hardware that comes into the US.

42. Masabi LLC has a third-party human resource firm, called Trinet, that handles Masabi LLC's US human resource management.

43. Trinet also acts as Masabi LLC's third-party payroll service and handles payroll for all Masabi LLC employees. Masabi LTD.'s payroll is handled in-house in London.

44. Masabi LTD. has no contracts with any end customer in the US.

45. Masabi LTD. has no customers in Texas.

46. Masabi LTD. has never met with any customer in Texas.

47. Masabi LTD does not sell anything in Texas.

48. Masabi LTD. does license its brand MASABI to Masabi LLC and Masabi LLC pays for that license.

49. Masabi LTD does charge Masabi LLC for back-office finance and cost estimating support services.

50. During the deposition of James Gooch, he was asked questions about why Masabi LLC employees Steve Young and Kirt Heywood were wearing name tags at the

Texas Transit Association trade show that said Masabi LTD. on them. I investigated this issue further and confirm Steve Young and Kirt Heywood are or were employees of Masabi LLC, not Masabi LTD. And that the Texas Transit conference person that created the name tags accidentally put the wrong company name on the name tags. The name tags should have said "Masabi LLC".

51. Masabi LLC's marketing director, Irina Grant, paid for Masabi LLC's entrance fee for the Texas Transit Association trade show out of Masabi LLC's marketing budget.

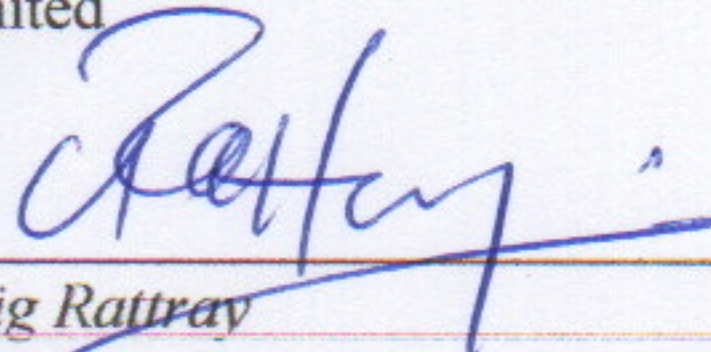
52. Plaintiff sought jurisdictional discovery in response to Defendant Masabi's LTD's motion to dismiss. Plaintiff took the deposition of six Masabi LTD's witness, all of which were located in London, along with the documents they produced. Plaintiff's counsel flew to London to take these depositions. None of the six Masabi LTD's witnesses live, work or do business in Texas.

53. Masabi LTD. has numerous contacts with companies that are located in the State of New York, including Appfigures, Inc. (133 Chrystie St. 3rd Fl. New York, NY 10002), Shortcut Software Company (formerly Clubhouse Software, Inc - 201 Allen Street, Unit #10004 New York, NY 10002), Comeet Technologies Inc. (26 Broadway, Suite 701 Brooklyn, NY 11249), Genesee Global Group Inc. (975 John Street, West Henrietta, NY 14586), NYC Self Storage D/B/A STORAGE PLUS (1053 Metropolitan Ave, Brooklyn, NY 1121) and Stack Exchange, Inc. (DBA Stack Overflow - 110 William St, 28th Fl, New York, NY 10038) (insert address). True and accurate copies of invoices for each of these suppliers are attached at **Exhibit B**. Sensitive commercial data has been redacted.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief, and that the documents attached hereto are true and accurate copies.

Executed on this 12th, day of December, 2023.

Masabi Limited

By:   
Name: Craig Rattray  
Its: General Counsel for Masabi LTD

# **EXHIBIT A**

**CONTRACT**

**MOBILITY PAYMENT  
PLATFORM  
VIA CONTRACT #20-194**

**MASABI, LLC**

**9.1.3 LIST OF SIMILAR CONTRACTS/REFERENCES (All Formal Solicitations)**


1. Project: Mobile Ticketing services for the RTC urban buses (including electronic validation).  
 Contact Person: Scott Mazick, Director of IT  
 Company Name: Regional Transportation Commission of Southern Nevada (RTC)  
 Telephone Number: (702) 676-1573  
 Fax Number:  
 E-mail Address: Mazicks@rtcsonv.com
  
2. Project: Mobile Ticketing services with visual validation for public transit services in eight out of the twelve counties in the Denver-Aurora-Boulder Combined Statistical Area in Colorado. Recently extended to include MaaS ticket sales through both Uber and Transit apps.  
 Contact Person: Tonya Anderson, Electronic Fare Operations Manager  
 Company Name: Regional Transportation District (RTD)  
 Telephone Number: (720) 984-3308  
 Fax Number:  
 E-mail Address: Tonya.Anderson@rtd-denver.com
  
3. Project: Calgary Transit is the public transit service which is owned and operated by the city of Calgary, Alberta, Canada. Masabi will deploy a Mobile ticketing solution for the City of Calgary.  
 Contact Person: Steve Waters, Leader, Development Support Centre, Client Solutions, Information Technology, CFOD  
 Company Name: Calgary Transit  
 Telephone Number: 403.815.7235  
 Fax Number:  
 E-mail Address: Steve.Waters@calgary.ca
  
4. Project: EZFare - Regional mobile ticketing project that allows riders to purchase and use tickets across 10+ agencies in the Ohio area. Tickets can be purchased on a smartphone or web portal using a computer browser. Currently, live with 3 agencies with plans to expand to 11 bus operators by the end of 2019.  
 Contact Person: Katherine Manning, Director of Client Services  
 Company Name: NEORide - EZFare  
 Telephone Number: 330-334-6877  
 Fax Number:  
 E-mail Address: katherinem@otrp.org

Masabi LLC  
 \_\_\_\_\_  
 Name of Firm

1330 Avenue of the Americas  
 \_\_\_\_\_  
 Address

New York NY 10019  
 \_\_\_\_\_  
 City State Zip Code

Limited Liability Corporation  
 \_\_\_\_\_  
 Type of Entity

  
 \_\_\_\_\_  
 Signature of Authorized Person

Jeffrey Nullmeyer  
 \_\_\_\_\_  
 Print Name

Business Development Manager  
 \_\_\_\_\_  
 Position and/or Title

21st July 2020  
 \_\_\_\_\_  
 Date

2022 Service Agreement - Mobile Ticketing System / Masabi, LLC Contract No. C-2022-0039 Page 1  
of 65 January 2022

**SERVICE AGREEMENT – MOBILE TICKETING SYSTEM FOR PARK & RIDE COMMUTER BUS  
SERVICE**

(the “Agreement”)

**Contract Number C-2022-0039 MASABI, LLC**  
**A DELAWARE CORPORATION, REGISTERED TO DO**  
**BUSINESS IN NEW YORK AS A FOREIGN LIMITED**  
**LIABILITY CORPORATION.**

**Contact Name:** Chip Whitman

**Title:** Senior Account Manager

**Physical Delivery Address**

1330 Avenue of the Americas

Suite 23A

New York, NY 10019

**Mailing Address (if different)**

**Telephone:** 978-888-7662

**Facsimile:**

**E-mail:** chip.whitman@masabi.com

**Tax ID Number: 99-0385078**

**THE WOODLANDS TOWNSHIP,**

**A SPECIAL PURPOSE DISTRICT AND POLITICAL**

**SUBDIVISION OF THE STATE OF TEXAS, DULY CREATED**

**AND OPERATING PURSUANT TO CHAPTER 289, ACTS**

**OF THE 73RD TEXAS LEGISLATURE, REGULAR SESSION,**

**1993, AS AMENDED.**

**Contact Name:** Ruthanne Haut

**Title:** Deputy Director - Community Services

**Physical Delivery Address**

2801 Technology Forest Blvd.

The Woodlands, TX 77381

**Telephone:** 281 210-3800

**Facsimile:**

**E-mail:** rhaut@thewoodlandstowship-tx.gov

# **EXHIBIT B**

Invoice #544217 **PAID****DATE:**

Tuesday, May 11, 2021

**TO:**

Engineering Masabi  
Masabi Ltd  
37 Beviden Street  
London, N1 6BH  
United Kingdom

**BY:**

Appfigures, Inc.  
133 Chrystie St. 3rd Fl.  
New York, NY 10002  
(212) 343-7900

**PAYMENT:****Credit Card**

MasterCard ..  
Expires

**ITEMS:**

Analytics: Premium

4/11/2021 - 5/10/2021

1

90 Additional Active Products

90

30% Bulk Product Discount

1

Total:

\$

\* Invoice does not include VAT or any other taxes unless specified otherwise.

To manage your billing information and view transaction history go into appfigures and go into your account.

If you have any questions regarding this invoice or have billing questions in general, please [contact us](#) directly.

**Shortcut Software Company**  
 201 Allen Street, Unit #10004  
 New York, NY 10002 US  
 +1 9173824291  
 accounting@shortcut.com  
 www.shortcut.com



# INVOICE

## BILL TO

Masabi Ltd.  
 37 Bevenden Street  
 London  
 N1 6BH  
 United Kingdom

**INVOICE #** 1856

**DATE** 11/01/2022

**DUE DATE** 12/01/2022

**TERMS** Net 30

DATE	DESCRIPTION	QTY	RATE	AMOUNT
	<b>Subscription - Annual</b>			
	1 added seat, 170 total (10/5/2022 - 1/31/2023)	1		
	<b>Subscription - Annual</b>			
	1 added seat, 171 total (10/14/2022 - 1/31/2023)	1		
	<b>Subscription - Annual</b>			
	1 added seat, 172 total (10/18/2022 - 1/31/2023)	1		

Banking information:

**BALANCE DUE**

**USD**

Acct Name: Shortcut Software Company

Bank Name: Silicon Valley Bank

Bank Address:

3003 Tasman Drive

Santa Clara, CA 95054

Routing #:

Acct #:

SWIFT:

Bill.com Payment Network ID:

# Invoice #2021-20377

This is your invoice for services provided by Comeet Technologies Inc.

**From**

Comeet Technologies Inc  
26 Broadway, Suite 701  
Brooklyn, NY 11249  
accounting@comeet.co

**Invoice Summary**

**Invoice Number** 2021-20377

**Date** 06/20/2022

**Terms** Due on receipt

**Due Date** 06/20/2022

**Amount Due (USD)** \$ [REDACTED]

**Bill To**

Masabi  
Radu Cenusa  
37 Bevenden Street  
London, England N1 6BL

**Description****Quantity****Rate****Amount**

Your Comeet Lite Package - Annual Subscription 100 - 250 employees invoice  
for the period 06/20/2022 through 12/19/2022.

1

**Amount Due (USD)**

\$ [REDACTED]

We appreciate your prompt payment.  
Thanks for your business!

**Wire Instructions:**

Bank: Chase

Branch Address [REDACTED] Ave, NY, NY 10017

Bank Account: [REDACTED]

ABA (Routing): [REDACTED]

Account Type [REDACTED]

Swift Code: [REDACTED]



GENESEE  
GLOBAL  
GROUP  
INC.

# INVOICE

Invoice No.	Date
-------------	------

083523

4/9/2021

Refer to Invoice Number

083523

SOLD TO:

MASABI  
37 BEVENDEN ST  
VAT GB 818291712  
LONDON, N1 6BH

SHIP TO:

MASABI

Attn:

Attn:

Sales Order	Cust No	Customer PO #	Order Date	Tax	Mark Shipment	Terms
0057797-0004	550333	2102015	2/22/2021	E		NET 30
Sales Rep	Ship Date	Shipped Via	F.O.B. Point	Ins	Waybill Number	
	4/9/2021	BEST WAY	EXW EX WORKS	N		

		Quantity						Unit Price	Amount
Item	T	Order	B/O	Ship	Part Number/Revision	Description		\$	\$
	S			2	786344-00	MASA JRPV-TOWER BASE REV 01* PLINTH			
TOTAL:								\$	

PLEASE REMIT TO: GENESEE GLOBAL GROUP, NC.

975 JOHN STREET

WEST HENR ET TA, NY 14586

PH: 585-475-0450

FAX: 585-475-0469

WWW.GENESEEGLOBAL.COM

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Rev: 4/8/2013 - 1:55:18PM

Should you have any questions regarding this invoice, please contact our office.